

### REMARKS

Claims 1-6 are pending herein, new claim 6 having been added.

Claim 5 has been allowed.

New independent claim 6 is based on claims 1 and 2 and further recites the formula for calculating the exercise time necessary to burn off the calories of a consumed food item for a given individual using various types of exercise. Since the allowance of method claim 5 was based on the recitation of the exercise duration formula, applicant courteously contends that claim 6 is also allowable.

Claims 1-4 were rejected under §103(a) as obvious over the U.S. patent to Diaz et al No. 5,890,128 ("Diaz") in view of the U.S. patent to Bimbaum No. 6,605,044 ("Bimbaum"). Reconsideration of this ground of rejection is courteously requested.

It is well settled that determinations of obviousness are to be made in accordance with the decision of the Supreme Court in *Graham v. John Deere*, 383 US 1, 148 USPQ 459 (1966). Under *Graham*, the scope and content of the prior art are determined, the differences between the prior art and the claimed invention are ascertained, and secondary considerations such as commercial success and solving a long felt need are to be considered where evidence thereof is available.

Diaz discloses a calorie computer which tracks calorie input and deducts calorie output as a function of activities performed by an individual on a daily basis. Bimbaum discloses a caloric exercise monitor which calculates a caloric expenditure of a person during exercise as a function of the person's exercising heart rate.

The combined teachings of Diaz and Bimbaum are not food specific and thus do not render the invention obvious. That is, the claimed invention provides an instantaneous indication to an individual of the duration of a selected exercise required to "burn off" the

calories of a selected food item **before** that item is consumed. This deters an individual from eating certain foods and helps him or her adopt a more nutritious and healthy diet. Neither Diaz nor Bimbaum, either alone or in combination, teaches a device for “calculating an exercise duration time necessary to burn the calories of a **selected food item** via a selected exercise” (emphasis added) as recited in claim 1.

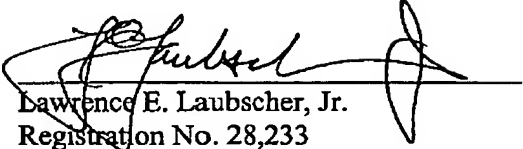
In addition to the differences between the claimed invention and the cited prior art, Applicant’s claimed invention solves a long felt but unsolved need in the health care industry and is on its way to achieving commercial success. Submitted herewith are copies of articles from the May 23, 2004 issue of *The Sunday Capital* (Annapolis, Maryland) newspaper and the June 11, 2004 issue of *The Daily Record* (Maryland) relating to the claimed invention. The articles both address the need for the claimed invention and the demand from the general public for the claimed invention. Based on sales of a precursor to the claimed invention, sales of up to 100,000 devices are anticipated.

For all the foregoing reasons, there is no disclosure of teaching in either Diaz or Bimbaum which discloses or teaches anything which would have suggested applicant’s presently claimed invention to one of ordinary skill in the art. Further, there is no disclosure or teaching in Diaz or Bimbaum which suggest the desirability of combining any portions thereof effectively to anticipate or suggest applicant’s presently claimed invention. Accordingly, reconsideration and withdrawal of the §103(a) rejection are respectfully requested.

Allowance of claims 1-4 and 6 is courteously requested.

Respectfully submitted,

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# The Sunday Capital Business

**B**SUNDAY  
May 23, 2004

By Alison Harbaugh — The Capital

## Entrepreneur rolls out calorie calculator

Hopes infomercials will sell diet gizmo

By DANIEL VALENTINE  
Staff Writer

The Double Whopper with cheese used to be Dan Mork's favorite thing on the Burger King menu.

Now the Edgewater businessman knows exactly how much it takes to work off that 1,150-calorie beefy treat — two hours and 37 minutes of casual walking, 31 minutes of hard running or 24 hours playing golf, his preferred activity.

"Now I have the chicken caesar salad," he said.

Armed with a calculator he invented that can identify the precise amount of exercise it takes to burn calories from 700 popular foods, Mr. Mork is hoping to follow in the steps of the ThighMaster and Bowflex in the realm of TV fitness products.

Mr. Mork, who premiered his Calorie Cruncher on the QVC home shopping channel Friday, is launching a \$3 million, year-long

series of two-minute infomercials that will air on cable systems across the country.

It's the latest and most ambitious venture to come from Mr. Mork, who founded Mork Marketing & Manufacturing from his home in South River Colony four years ago.

The company, which now has six employees at the Atlantic Oolt Building off Mitchell's Chance Road, designs promotional materials catering to major pharmaceutical companies.

Made in China, his creations include a neon green coffee mug with a sculpted nose on the side — a promotion for the Zyrtec allergy medicine — and a calculator doctors can use to compute a woman's breast cancer risk.

The breast cancer calculator was one of the precursors to the Calorie Cruncher, which Mr. Mork originally sold in 2002 as a way to promote a drug for treating Type 2 diabetes, a health condition caused by an improper diet.

(See CRUNCH, Page B2)

Edgewater businessman Dan Mork uses his Calorie Cruncher to compute nutrition information. Mr. Mork, who developed the dieting device with his company, Mork Marketing & Manufacturing, is about to sell the calorie counters nationwide through TV infomercials.

# CRUNCH

(Continued from Page B1)

"It was something to let the doctor show to a patient the consequences of the food they were eating and let them make their own choice," he said.

He shipped thousands of units to the drug company, only to realize that with the rising popularity of high-protein, low-carbohydrate diets, his Calorie Crunchers were being appropriated by more than doctors. Calorie-conscious salespeople were taking the calculators themselves and giving them to friends.

By the time the drug company had ordered 50,000 additional units, Mr. Mork said he knew he had something he could sell directly to consumers.

The whole concept of the machine centers on having a portable, easy-to-use device that lets diners know what the calories are at major restaurants like Boston Market, Wendy's, Pizza Hut and McDonald's.

The Calorie Cruncher nutrition listings come from USDA reports for the restaurant industry.

"We're targeting all the most common foods that people eat, use or abuse," Mr. Mork said. "If you type in what you're eating, then know what you would have to do to make that

up, all the sudden, people start saying 'Whoa.'"

The Calorie Cruncher is about the size of a checkbook, with four buttons to guide users.

Users select any food they plan to eat, then view the calories, fat and carb counts. After selecting body weight and the type of activity they plan to do, the calculator clearly states the exact number of minutes it takes to burn the calories.

Though it could be used to help exercisers compute accurate workout times, Mr. Mork sees it in a more preventive way.

"The exercise part is only to show the consequence," he said. "The important thing is that people realize how damaging some of these foods are to you and get something else instead."

The Calorie Cruncher is selling on the commercials for \$39.99, and includes a pedometer and an exercise book.

Mr. Mork hopes the product will appeal to weight-conscious customers, a market that has only grown as obesity levels rise in the United States.

Michael Sallustio, a nutritionist and personal trainer for the In Good Health center in Annapolis, said the Calorie Cruncher might fill a niche.

"It could be a valuable tool," said Mr. Sallustio. "It will create some awareness, and it helps that it's portable."

Still, Mr. Sallustio said counting calories is no substitute for an organized regime of exercise, diet and lifestyle changes he counsels at his health center

and gym.

"You don't want to rely on it as a means of losing weight in the long run," he said. "It's more complex than just counting calories."

Mr. Mork agrees.

"It's all about basic diet and exercise, and this is a tool that lets you get on to that," he said. "There is no quick fix, no magic way to lose weight. If there was, trust me, the pharmaceutical companies would be selling it."

While he will continue making separate promotions for drug companies, Mr. Mork is hoping to make a mark with the Calorie Cruncher. If the ad campaigns and phone orders are successful, he hopes to sell about 100,000 a year.

But infomercials have drawbacks, said Roland Rust, chair of marketing for the Robert H. Smith School of Business at the University of Maryland College Park.

"It can be effective, but it's dangerous," Mr. Rust said. "It will tend to air when there's no one watching. Then you have to ask, of the small number of people that are actually watching, what amount of them are in the demographic that matches the product?"

Mr. Mork said he knows he's gambling on the success.

"It's always a risky proposition," he said. "The only way we'll really know is if people pull out their credit cards."

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## HEALTH CARE

# Mork knows how to ruin a Double Whopper with cheese

BY DEBRA GEORGE SIEBT  
Daily Record Business Writer

It takes 277 minutes to walk off a Double Whopper with cheese from Burger King. It takes 38 minutes to walk off a Chicken Caesar salad from the same restaurant.

This choice, between a Double Whopper and a Chicken Caesar salad, seems easy when you know how much exercise is needed to burn off the food. And that's exactly what Daniel Mork hopes people realize — that the choice can be easy.

Mork, founder of Mork Marketing and Manufacturing in Edgewater, knows there is no magic pill or quick-fix for losing weight, which is why he invented the Calorie Cruncher. The Calorie Cruncher is an electronic pocket-sized diet coach that calculates how much activity is needed to burn off certain foods.

Mork is marketing the product on cable television and QVC.

The Calorie Cruncher contains 700 common foods and selections from 15 national chain restaurants including Subway, Wendy's, Olive Garden, McDonald's and Pizzeria Hut. It also lists several different types of exercise including walking, jogging, tennis, golf, yoga and aerobics and then calculates the amount of exercise needed to burn off the food based on a person's weight.

"The consequence is the impact," said Mork. "It gives people more information to make better choices."

Before deciding to sell the Calorie Cruncher to the general public, Mork sold approximately 50,000 devices to physicians. He soon noticed that more and more salespeople were interested in the device, which led him to seek a patent.

A major pharmaceutical company that has a type II diabetes drug approached Mork with the idea. Approximately 50 percent of patients with type II diabetes are obese and the company wanted to produce something



Daniel Mork, founder of Mork Marketing and Manufacturing in Edgewater, knows there is no magic pill or quick-fix for losing weight, which is why he invented the Calorie Cruncher.

that would help patients make better food choices.

"People started saying it was a great thing," said Mork. "They all wanted one ... I knew I had to get it to the general public."

Last week, Mork began marketing the Calorie Cruncher through a "moderately successful" spot on QVC during an exercise hour.

Off television, the device, which retails for \$39.99, is sold as a package with a pedometer and an exercise book. He anticipates selling approximately 100,000 Calorie Crunchers annually.

"We didn't sell the package on QVC," said Mork. "QVC is just like a store ... it doesn't mean it won't sell ... we'll go back to QVC."

In addition to QVC, a two-minute infomercial for the Calorie Cruncher will begin airing in mid-June. The infomercial is aimed to reach a female audience between the

ages of 35 to 65 years who are interested in fitness. Lifetime, SoapNet and Style are some of the stations that will air the infomercial.

"As it starts progressing, we will start expanding it," said Mork. "We'll start testing it with men and other age groups."

The infomercial emphasizes that the Calorie Cruncher can "supercharge any diet" and can be used with diets like Atkins, South Beach and Weight Watchers.

"It's not a get-rich-quick promise," said Mork. "This gives the tools to help a person who is on any diet."

Mork's main business is product development and design for primarily medical and pharmaceutical companies.

Mork has six employees including a three-member Canadian design team. The team creates concepts such as business card holders, clocks, picture frames, pen lights, stress balls and innovative paper clips for pharmaceutical companies.

A red nose that sneezes when pressed is one item that was made for Zyrtec, an allergy medication. Other designs include products that are educational and eye-catching, like a three dimensional engraved bar graph showing cholesterol levels and a clock that shows good and bad bone density for an osteoporosis medication.

Mork then works with distributors to purchase the product. Pharmaceutical and medical companies use the items for product recognition.

"It keeps the brand in front of the doctors," said Mork. "The pharmacy industry is very competitive ... these products remind doctors to prescribe a certain drug."

Mork, who has several patents pending, started his own business four years ago in his home and had no sales for the first eight months. Last year, his business made approximately \$4.5 million in revenue.

"It's been rough with budget cuts in pharmaceutical companies, but it's picking back up," said Mork. "There are ups and downs in the business."

Approximately 20 other companies in the United States design and manufacture medical and pharmaceutical brand awareness products. Mork's smaller shipments are approximately 5,000 to 10,000 pieces and his larger shipments are 200,000 to 400,000 pieces.

In addition to the Calorie Cruncher, Mork developed another assessment calculator for breast cancer. The calculator takes into account several factors including race and age and determines a five-year and lifetime risk for breast cancer.

The FDA found it was such a useful tool, it required every physician to have one, Mork said. He continues to produce them and has sold between 200,000 and 300,000 to date.

"The future's bright," said Mork. "We have a lot of creativity and we're able to work together as a team ... there are endless possibilities."